

**MINUTES OF THE SPECIAL JOINT MEETING OF THE  
COMMON COUNCIL AND UTILITY SERVICE BOARD OF THE  
CITY OF JASPER, INDIANA  
JANUARY 10, 2014**

A special joint meeting of the Common Council and Utility Service Board of the City of Jasper, Indiana, was held on Friday, January 10, 2014, in the Council Chambers of City Hall located at 610 Main Street, Jasper, Indiana.

**Call to Order.** Presiding Officer Mayor Terry Seitz called the joint Common Council and Utility Service Board meeting to order at 8:00 a.m.

**COMMON COUNCIL ROLL CALL:**

Clerk-Treasurer Juanita S. Boehm called the roll

Mayor Terry Seitz	Present
Council members:	
Gregory Schnarr	Present
David Prechtel	Absent
Thomas Schmidt	Present
Earl Schmitt	Present
Kevin Manley	Present
Randall Buchta	Present
Raymond Howard	Present
City Attorney Renee Kabrick	Present
Clerk-Treasurer Juanita S. Boehm	Present

Clerk-Treasurer Boehm announced that in order to have a quorum for the meeting, a majority of the council members must be in attendance. Six of the seven council members were in attendance which is a majority; therefore, there was a quorum for the meeting.

**UTILITY SERVICE BOARD ROLL CALL:**

Secretary Doug Schulte called the roll

Wayne Schuetter – Chairman	Present
Rick Stradtner – Vice Chairman	Present
Doug Schulte – Secretary	Present
Dave Hurst – Water Commissioner	Present
Alex Emmons – Wastewater Commissioner	Present
Keith Masterson – Gas Commissioner	Absent
Ken Sendelweck – Electric Commissioner	Present

**ALSO PRESENT:**

Ernie Hinkle – Gas and Water Manager  
Jerry Schitter – Electric Distribution Manager  
Ed Hollinden – Wastewater Manager  
Bud Hauersperger – General Manager of Utilities  
Ashley Kiefer – Office Manager  
Renee Kabrick – City Attorney

**Pledge.** Mayor Seitz then invited those in attendance to join him in reciting the Pledge of Allegiance.

**Purpose.** Mayor Seitz said the purpose of the meeting was to address a recent settlement offer submitted to the City by Healthy Dubois County, regarding the current litigation.

Mayor Seitz said before the discussion on the settlement offer, the Memorandum from the Joint Executive Session held on Wednesday, January 8<sup>th</sup>, must be approved by both Boards. City Attorney Renee Kabrick then read the contents of the Memorandum.

A **motion** was made by Doug Schulte and seconded by Dave Hurst to approve the Memorandum as presented. Motion carried, 6-0.

Thereafter, a **motion** was made by Council Member Kevin Manley and seconded by Council Member Earl Schmitt to approve the Memorandum as presented. Motion carried, 6-0.

Mayor Seitz then asked City Attorney Renee Kabrick to review the proposed settlement offer.

Kabrick said shortly after the first of the year a letter was received from the Plaintiffs' legal counsel to the City which contained a proposed settlement offer. That letter was provided to all Council and Utility Service Board members and was the subject of discussion at the Executive Session held on January 8<sup>th</sup>. No formal action took place January 8<sup>th</sup> with regards to the settlement offer, due to the meeting being an Executive Session. Any action must take place at a public meeting.

Kabrick then said she would review the highlights of the settlement offer that were discussed at the Executive Session on January 8<sup>th</sup>. The letter was dated December 31, 2013, and was addressed to Gregory Neibarger, the City's legal counsel in the litigation. The subject of the letter was "Proposed Settlement of *Dr. Norma Kreilein et al. v. Common Council of the City of Jasper et al.*"

Kabrick read from page 2 of the letter.

"In order for this litigation to be resolved, both sides will need to engage in reasonable but meaningful compromise. Under the current circumstances, HDC believes that it would be in the public interest for it to take the first step in this direction by proposing settlement on the significantly compromised terms presented below. HDC hopes that the Defendants can accept this offer, or in the alternative make a similar compromise in the form of a meaningful counter offer that would provide a real basis for a dialogue that would offer some hope of resolution of this matter.

As HDC's compromise, HDC is willing under the current circumstances, to drop the following terms and demands that were included in its July 24, 2013 settlement offer:

1. The Defendants would admit to violations of the Open Door Law;
2. The Defendants would publicly declare the biomass incineration project to be abandoned;
3. The Defendants would state publicly that HDC and its litigation has not been a detriment to the Defendants;
4. The Defendants would acknowledge that it underestimated the health effects from the project;

5. Although HDC prefers that any settlement be entirely a public agreement with no confidentiality, HDC is willing to negotiate regarding aspects of an agreement that the Defendants may prefer remain confidential;”

Kabrick stated that for verification purposes those five points have been dropped from the original settlement offer in July. She then continued reading from page 2 of the letter.

“As a result, my clients would be willing to dismiss their claims, with prejudice, in exchange for a dismissal of your clients’ claims, with prejudice, with the following simplified and less demanding terms:

1. Mutual dismissal of all claims by all parties with prejudice;
2. The Defendants would pay, or arrange for the payment of, HDC’s attorneys’ fees and costs at market rates, approximately \$240,000, which according to published accounts would be less than half of the amount the Defendants and/or Jay Catasein or his corporate entities have paid out for this litigation to date.

HDC remains willing to assist the Defendants in 2014 in an effort to find demolition funds, including potential grant funding, upon the City’s request. I look forward to the opportunity to discuss a mutually acceptable settlement arrangement with you.”

Kabrick said those are the terms of the settlement offer.

Utility Service Board Chairman Wayne Schuetter said the terms of the offer are very straight forward and no additional discussion needs to be had. He then called for a motion to either accept the settlement offer or reject the settlement offer, as presented.

A **motion** was made by Ken Sendelweck and seconded by Rick Stradtner to reject the settlement offer from Healthy Dubois County, as presented. Motion carried 6-0.

Thereafter, a **motion** was made by Council Member Gregory Schnarr and seconded by Council Member Kevin Manley to reject the settlement offer from Healthy Dubois County, as presented. Motion carried, 6-0.

Attorney Kabrick stated that since the Executive Session they have been in discussions with Plaintiffs’ counsel and they have taken a step forward. Kabrick asked both Boards for authority for herself, along with the City’s litigation counsel, to continue with discussions with the Plaintiffs’ counsel, in the hope that common ground could be reached for a settlement. She hopes to have an agreement to discuss with the Boards next week.

A **motion** was made by Dave Hurst and seconded by Alex Emmons to give City Attorney Kabrick and the City’s litigation counsel, Kaiser and Neibarger, permission to continue negotiations with Healthy Dubois County in order to come to a settlement on this issue.

Chairman Schuetter emphasized that there is no will among the Utility Service Board members to pay any funds directly to Healthy Dubois County to settle this litigation. Motion carried, 6-0.

Thereafter, a **motion** was made by Council Member Ray Howard and seconded by Council Member Randall Buchta to give City Attorney Kabrick and the City’s litigation counsel, Kaiser

and Neibarger, permission to continue negotiations with Healthy Dubois County in order to come to a settlement on this issue.

Council Member Kevin Manley then re-emphasized Chairman Schuetter's sentiments that the Council is not in a position to pay any funds directly to Healthy Dubois County to settle this litigation. Kabrick said that she realizes that any negotiated settlement agreement must come back for a vote by both Boards at a public meeting before final approval can be given, and that has been made very clear to the Plaintiffs' counsel as well. Motion carried, 6-0.

Kabrick thanked the Boards for giving them the authority to continue negotiations. She then asked the Board and Council members to forward their availability for an Executive Session to be held next Wednesday or Thursday to her so a meeting can be scheduled.

**Adjournment by Utility Service Board.** There being no further business to come before the Utility Service Board, a **motion** was made by Alex Emmons and seconded by Doug Schulte to adjourn the meeting. The motion carried 6-0 and the meeting was adjourned at 8:16 a.m.

**Adjournment by Council.** There being no further business to come before the Council, a **motion** was made by Council Member Tom Schmidt and seconded by Council Member Randall Buchta to adjourn the meeting. The motion carried 6-0 and the meeting adjourned at 8:16 a.m.

The minutes were hereby approved by the Common Council \_\_\_\_ with   X   without corrections or clarification this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

Attest:

\_\_\_\_\_  
**Mayor Terry Seitz**

\_\_\_\_\_  
**Juanita S. Boehm, Clerk-Treasurer**

The minutes were hereby approved by the Utility Service Board \_\_\_\_ with   X   without corrections or clarification this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

Attest:

\_\_\_\_\_  
**Wayne Schuetter, Chairman**

\_\_\_\_\_  
**Doug Schulte, Secretary**